

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 13 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SHELVIN AVINESH PRASAD,

Petitioner,

v.

**MICHAEL B. MUKASEY, Attorney
General,**

Respondent.

No. 06-75173

Agency No. A45-685-192

MEMORANDUM*

SHELVIN AVINESH PRASAD,

Petitioner,

v.

**MICHAEL B. MUKASEY, Attorney
General,**

Respondent.

No. 07-70372

Agency No. A45-685-192

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted June 5, 2008

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Pasadena, California

Before: **KOZINSKI**, Chief Judge, **ALDISERT**^{**} and **BEA**, Circuit Judges.

We have jurisdiction to review whether petitioner is eligible for withholding of removal or Convention Against Torture (CAT) relief. See 8 U.S.C. § 1252(a)(2)(D); Ramadan v. Gonzales, 479 F.3d 646, 648 (9th Cir. 2007) (per curiam). We lack jurisdiction to review petitioner's asylum claim because he failed to appeal the IJ's discretionary denial of asylum to the Board of Immigration Appeals and thus failed to exhaust his administrative remedies. See Barron v. Ashcroft, 358 F.3d 674, 678 (9th Cir. 2004); Zara v. Ashcroft, 383 F.3d 927, 930 (9th Cir. 2004).

The BIA did not abuse its discretion in denying petitioner's motion to remand. Petitioner's commission of the offense of possessing a controlled substance in May 2004 interrupted his continuous residence in the United States before he satisfied the seven-year requirement for cancellation of removal. See 8 U.S.C. § 1229b(a); 8 U.S.C. § 1229b(d)(1). Further, petitioner is ineligible for relief under the Federal First Offender Act because there is no court order entered a

^{**} The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

state rehabilitative statute. See Chavez-Perez v. Ashcroft, 386 F.3d 1284, 1289 (9th Cir. 2004).

Petitioner doesn't qualify for withholding of removal or CAT relief because the harassment he alleged that his family faced in Fiji on account of their Indian heritage at most reflects general racial and economic tension. Petitioner can't establish that he personally suffered, or will suffer if deported, persecution, let alone torture. See Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998); Prasad v. INS, 47 F.3d 336, 340 (9th Cir. 1995).

PETITION DISMISSED IN PART AND DENIED IN PART.